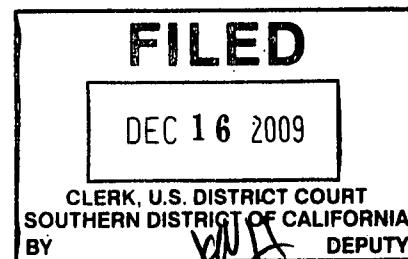


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8 UNITED STATES DISTRICT COURT
 9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 ETHELYN HOLMES,

11 Plaintiff,) Case No. 09CV 2835 WQH NLS
 12) COMPLAINT FOR VIOLATION
 13 vs.) OF FEDERAL FAIR DEBT
 14 RETRIEVAL-MASTERS) COLLECTION PRACTICES ACT,
 15 CREDITORS BUREAU, INC.,) ROSENTHAL FAIR DEBT
 16 Defendant.) COLLECTION PRACTICES ACT,
 17) AND INVASION OF PRIVACY
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)
 26)
 27)
 28)

18 I. INTRODUCTION

19 1. This is an action for damages brought by an individual consumer for
 20 Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §
 21 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection
 22 Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of
 23 which prohibit debt collectors from engaging in abusive, deceptive, and unfair
 24 practices. Ancillary to the claims above, Plaintiff further alleges claims for
 25
 26
 27
 28

1 invasion of privacy arising from intrusion upon seclusion and public disclosure of
2 private facts.
3

4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).
6

7 **III. PARTIES**

8 3. Plaintiff, ETHELYN HOLMES (“Plaintiff”), is a natural person
9 residing in San Diego county in the state of California, and is a “consumer” as
10 defined by the FDCPA, 15 U.S.C. § 1692a(3) and is a “debtor” as defined by Cal
11 Civ Code 1788.2(h).
12

13 4. At all relevant times herein, Defendant, RETRIEVAL MASTERS
14 CREDITORS BUREAU, INC., (“Defendant”) was a company engaged, by use of
15 the mails and telephone, in the business of collecting a debt from Plaintiff which
16 qualifies as a “debt,” as defined by 15 U.S.C. §1692a(5), and a “consumer debt,”
17 as defined by Cal Civ Code § 1788.2(f). Defendant regularly attempts to collect
18 debts alleged to be due another, and therefore is a “debt collector” as defined by
19 the FDCPA, 15 U.S.C. § 1692a(6), and RFDCPA, Cal Civ Code § 1788.2(c).
20
21

22 **IV. FACTUAL ALLEGATIONS**
23

24 5. At various and multiple times prior to the filing of the instant
25 complaint, including within the one year preceding the filing of this complaint,
26 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.
27
28

1 Defendant's conduct violated the FDCPA and the RFDCPA in multiple ways,
2 including but not limited to:

- 3 a) Causing a telephone to ring repeatedly or continuously
4 to annoy Plaintiff (Cal Civ Code § 1788.11(d)),
5 including, but not limited to, calling Plaintiff more than
6 twice a day, more than ten times a week, and more than
7 twenty times a month;
- 8 b) Communicating, by telephone or in person, with
9 Plaintiff with such frequency as to be unreasonable and
10 to constitute an harassment to Plaintiff under the
11 circumstances (Cal Civ Code § 1788.11(e)), including,
12 but not limited to, calling Plaintiff more than twice a
13 day, more than ten times a week, and more than twenty
14 times a month;
- 15 c) Causing Plaintiffs telephone to ring repeatedly or
16 continuously with intent to harass, annoy or abuse
17 Plaintiff (§ 1692d(5)), including, but not limited to,
18 calling Plaintiff more than twice a day, more than ten
19 times a week, and more than twenty times a month;
- 20 d) Falsely representing the character, amount, or legal
21 status of Plaintiffs debt(§ 1692e(2)(A));
- 22 e) Failing to provide Plaintiff with the notices required by
23 15 USC § 1692g, either in the initial communication
24 with Plaintiff, or in writing within 5 days thereof,
25 including(§ 1692g(a));and
- 26 f) Where Defendant had not yet made an attempt to
27 contact Plaintiff's counsel or had not given Plaintiff's
28 counsel sufficient time to respond to the initial attempt
to communicate with Plaintiff's counsel, and where
Plaintiff's counsel had not given Defendant permission
to contact Plaintiff directly, communicating with
Plaintiff directly after learning that Plaintiff is being
represented by counsel (§ 1692c(a)(2)).

26 6. Defendant's aforementioned violations of the FDCPA and RFDCPA
27

28 also constitute an intentional intrusion into Plaintiff's private places and into

1 private matters of Plaintiff's life, conducted in a manner highly offensive to a
2 reasonable person. Plaintiff had a subjective expectation of privacy that was
3 objectively reasonable under the circumstances.
4

5 7. Defendant's aforementioned disclosure of facts regarding Plaintiff's
6 debt to third parties constitutes a public disclosure of a private fact not of
7 legitimate public concern. Defendant's disclosures were highly offensive to a
8 reasonable person.
9

10 8. As a result of the above violations of the FDCPA, RFDCPA and
11 invasion of privacy, Plaintiff suffered and continues to suffer injury to Plaintiff's
12 feelings, personal humiliation, embarrassment, mental anguish and emotional
13 distress, and Defendant is liable to Plaintiff for Plaintiff's actual damages,
14 statutory damages, and costs and attorney's fees.
15
16

17
18 **COUNT I: VIOLATION OF FAIR DEBT
19 COLLECTION PRACTICES ACT**

20 9. Plaintiff reincorporates by reference all of the preceding paragraphs.
21

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully prays that judgment be entered
24 against the Defendant for the following:
25

26 A. Declaratory judgment that Defendant's conduct
27 violated the FDCPA;
28 B. Actual damages;

- 1 C. Statutory damages;
- 2 D. Costs and reasonable attorney's fees; and,
- 3 E. For such other and further relief as may be just and proper.

4

5 **COUNT II: VIOLATION OF ROSENTHAL**
FAIR DEBT COLLECTION PRACTICES ACT

6

- 7 10. Plaintiff reincorporates by reference all of the preceding paragraphs.
- 8 11. To the extent that Defendant's actions, counted above, violated the
9 RFDCPA, those actions were done knowingly and willfully

10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff respectfully prays that judgment be entered
13 against the Defendant for the following:

- 14 A. Declaratory judgment that Defendant's conduct
15 violated the RFDCPA;
- 16 B. Actual damages;
- 17 C. Statutory damages for willful and negligent violations;
- 18 D. Costs and reasonable attorney's fees,
- 19 E. For such other and further relief as may be just and proper.

20

21 **COUNT III: COMMON LAW INVASION OF PRIVACY BY INTRUSION**
AND INVASION OF PRIVACY BY PUBLICATION OF PRIVATE FACTS

22

23 12. Plaintiff reincorporates by reference all of the preceding paragraphs.

24

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff respectfully prays that judgment be entered
27 against the Defendant for the following:

- A. Actual damages
- B. Punitive Damages; and,
- C. For such other and further relief as may be just and proper.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY

Respectfully submitted this 14th day of December, 2009.

By:

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Court Name: USDC California Southern
Division: 3
Receipt Number: CAS008415
Cashier ID: msweeney
Transaction Date: 12/17/2009
Payer Name: LO OF TODD M FRIEDMAN

CIVIL FILING FEE

For: HOLMES V RETRIEVAL-MASTERS
Case/Party: D-CAS-3-09-CV-002835-001
Amount: \$350.00

CHECK

Check/Money Order Num: 1663
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.